Society of Audiovisual Authors
Société des Auteurs Audiovisuels

SAA Contribution
Public Consultation on Cloud Computing

1. *Are you responding for a Company?* (compulsory) Y/N*
   - No

5. Are you a Public Administration?* (compulsory) Y/N
   - No

9. If you are not a company nor a public administration, are you...* (compulsory) (Academic / Individual / Other)
   - Other

10. If other, please explain...* (compulsory) (between 1 and 50 characters)
    - European association. (20 characters)

14. If you are not a user, nor a potential user, nor a provider:
    Please describe your interest in this topic and the source of your knowledge.
    - The Society of Audiovisual Authors (SAA) is an association of European Collective Management Societies representing audiovisual authors. Through its members SAA represents the rights of over 120,000 European film and television screenwriters and directors.
    - Cloud computing covers a variety of potential services, including those based on protected content – such as audiovisual works. Some examples of such services already exist such as Deezer and Spotify for music and LoveFilm for audiovisual and this is a market that will continue to grow in the coming years with the advent of "locker" services. While this can only be welcomed, it is essential that such services develop in full respect of authors' rights – hence our contribution.

Clouds for users

1. *Do you feel that in the cloud services you are currently using or have been evaluating (or are providing), the rights and responsibilities of both user and provider are clear? (optional) Y/N*
   - No

2. *Please comment (optional) (2,000 characters max)*
   There seems to be confusion regarding authors' rights for "locker" cloud services. In the US, 3 cloud services launched this year (all music-based) with 2 different legal approaches. Apple secured licenses to launch its iCloud with 'iTunes Match' while Google and Amazon launched services without securing licenses with rightsholders. The latter claim that service-users make private copies of the content (requiring each user to upload each song, irrespective of whether other users have already uploaded the same song, unlike Apple which compares users tracks with their own library and keeps only one copy).

   In Europe, taking into account EU Directives (e.g. 2001/26 EC) and IPR legislation, we would distinguish 2 types of services. Those which store one copy for all users (hence operating a service to users) and those where users copy

their own files to a locker (making private copies). The former has to be authorised by rightsholders, while the latter does not as it is an exception to authors' rights (provided that copies are not shared with third parties beyond private copying exception limits). It does require fair compensation for authors, however.

The European Court of Justice's jurisprudence authorises Member States to establish a 'private copying levy' for the purposes of financing fair compensation. This must be paid not by the end consumers, but by either the manufacturers, importers or service providers of a copying facility (*Padawan* paragraph 46).

In both cases, an additional problem relates to the copying by users of illegal files from their library to the service. Cloud services should not have the capacity to "legalise" these illegal files without due negotiation with rightsholders. Cloud services related to protected works must respect the IP rights attached to them and conform with the law.

(1,738 characters)

7. *Do you feel that the question of liability in cross-border situations is clear for cloud users and cloud providers? Y/N (optional)*
   - No
8. *Why? (optional) (2,000 characters max)*

- Should private copying levies be applied to cloud services in some European countries in the future, how will the location (and jurisdiction) of the user or the service provider be balanced? Would, for example, a service operating out of the UK be able to offer a private copy levy free service to all Europeans and distort the single market? Hopefully, the European Court of Justice stated in the Thuiskopie case that the Directive 2001/29, in particular Article 5(2)(b) and (5) thereof, must be interpreted as meaning that it is for the Member State which has introduced a system of private copying levies (chargeable to the manufacturer or importer of media for reproduction of protected works), and on the territory where the harm caused to authors (by the use for private purposes of their work) by purchasers who there reside occurs, to ensure that those authors actually receive the fair compensation intended to compensate them for that harm. In that regard, the mere fact that the commercial seller of reproduction equipment, devices and media is established in a Member State other than that in which the purchasers reside has no bearing on the obligation to achieve a certain result. It is for the national court, where it is impossible to ensure recovery of the fair compensation from the purchasers, to interpret national law in order to allow recovery of that compensation from the person responsible for payment who is acting on a commercial basis (paragraph 41). (1,479 characters)